

FILED

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2012 SEP -7 PM 12:45

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

12 Attorneys for Defendant STARBUCKS  
13 CORPORATION

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 DOUGLAS TROESTER, on behalf of  
17 himself, and all others similarly  
18 situated,

19 Plaintiffs,

20 v.

21 STARBUCKS CORPORATION, a  
22 Washington corporation; and DOES 1-  
23 50, inclusive,

24 Defendants.

Case No.

**CV 12-7677**

**CLASS ACTION**

**STARBUCKS CORPORATION'S  
NOTICE OF REMOVAL OF  
ACTION PURSUANT TO 28 U.S.C.  
§§ 1332(D)(2), 1441, 1446, AND 1453**

*[Filed Concurrently with Declarations  
of Jana Rutt and Mark R. Curiel;  
Notice of Interested Parties; Notice of  
Related Cases; Civil Cover Sheet]*

Date Action Filed: August 6, 2012

*(Los Angeles County Superior Court,  
No. BC489781)*

STARBUCKS CORPORATION'S NOTICE OF REMOVAL OF ACTION  
PURSUANT TO 28 U.S.C. §§ 1332(D)(2), 1441, 1446, AND 1453

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1 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
2 CENTRAL DISTRICT OF CALIFORNIA:

3 PLEASE TAKE NOTICE that defendant Starbucks Corporation ("Starbucks")  
4 hereby removes to this Court the state court action described below, pursuant to 28  
5 U.S.C. §§ 1332(d)(2), 1441, 1446, and 1453. In support thereof, Starbucks states as  
6 follows:

7 1. On August 6, 2012, a putative class action was commenced and is currently  
8 pending against Starbucks in the Superior Court of California, County of Los Angeles,  
9 as Case No. BC489781, entitled *Douglas Troester, on behalf of himself, and all others*  
10 *similarly situated, Plaintiffs, vs. Starbucks Corporation, a Washington Corporation; and*  
11 *DOES 1-50, inclusive, Defendants*. On August 10, 2012, Starbucks was served with the  
12 complaint. See Declaration of Mark R. Curiel in Support of Starbucks Corporation's  
13 Notice of Removal of Action Pursuant to 28 U.S.C. §§ 1332(d)(2), 1441, 1446, and  
14 1453 ("Curiel Decl.") ¶ 2. Attached as **Exhibit A** to the Curiel Declaration is a true  
15 copy of the Notice of Service of Process, Summons, Complaint, Notice of Case  
16 Assignment, ADR Information Package, and Voluntary Efficient Litigation Stipulations.  
17 See Curiel Decl., ¶ 2. Attached as **Exhibit B** to the Curiel Declaration is a true  
18 conformed copy of Starbucks Answer to the Complaint, filed in Los Angeles County  
19 Superior Court on September 6, 2012. See Curiel Decl., ¶ 3. There have been no  
20 further proceedings in case number BC489781, and no other pleadings have been filed  
21 and served upon Plaintiff or Starbucks in this action. See Curiel Decl., ¶ 4.

22 2. Plaintiff Douglas Troester is a former Starbucks employee who worked for  
23 a Starbucks store in Burbank, California. Complaint, ¶ 5. He asserts claims for  
24 violation of California wage and overtime laws based on alleged off-the-clock work  
25 performed during store closing procedures, failure to provide accurate wage statements,  
26 failure to pay all final wages upon termination, and violation of the California unfair  
27 competition laws and declaratory relief. See Complaint, ¶¶ 9-11, 32-69. Plaintiff  
28

purports to bring these claims on behalf of a putative class that includes all persons, except store managers, employed by Starbucks in California who performed off-the-clock work during store closing procedures. *See* Complaint, ¶¶ 10-12.<sup>1</sup>

3. The Complaint and Summons were served on August 10, 2012. *See* Curiel Decl. ¶ 2 & Exh. A. Starbucks Notice of Removal is timely because it is filed within thirty (30) days of that service. *See* 28 U.S.C. § 1446(b).

4. Under 28 U.S.C. § 1441(a), a defendant may remove to federal district court “any civil action brought in a State court of which the district courts of the United States have original jurisdiction.” Because the above-described action is a civil action of which this Court has original jurisdiction, for the reasons set forth below, it may be removed to this Court.

5. **Diversity Jurisdiction.** This Court has diversity jurisdiction over Plaintiff’s action pursuant to the Class Action Fairness Act (“CAFA”), 28 U.S.C. § 1332(d). Under CAFA, federal district courts have original jurisdiction over a class action if (1) it involves 100 or more putative class members, (2) any class member is a citizen of a state different from any defendant, and (3) the aggregated amount in controversy exceeds \$5 million (exclusive of costs and interest). *See* 28 U.S.C. §§ 1332(d)(2), d(5), and (d)(6).

6. **Class Size.** The putative class exceeds 100 members. *See* Complaint, ¶14; Declaration of Jana Rutt in Support of Notice of Removal of Action (“Rutt Decl.”) ¶ 9.

7. **Diversity of Citizenship Under CAFA.** “[U]nder CAFA, complete diversity is not required; ‘minimal diversity’ suffices.” *Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007). Minimal diversity exists if any class member is a

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<sup>1</sup> Class definitions that require a merits-based determination, like the one Plaintiff proposes, are not appropriate. *See, e.g., Hagen v. City of Winnemucca*, 108 F.R.D. 61, 63 (D. Nev. 1985). *See also* Manual for Complex Lit. 4th § 21.222 (an order “defining a class should avoid subjective standards . . . or terms that depend on resolution of the merits”).

1 citizen of a state different from any defendant. 28 U.S.C. § 1332(d)(2). At all relevant  
2 times, there has been diversity of citizenship between the parties to the action.<sup>2</sup>

3 8. Starbucks is informed and believes that Plaintiff, at the time this action was  
4 commenced, was and is a citizen and resident of the State of California. *See* Complaint  
5 ¶ 5; Rutt Decl. ¶ 11; *Albrecht v. Lund*, 845 F.2d 193, 194-95 (9th Cir. 1988) (finding  
6 citizenship requirement satisfied where plaintiff's complaint contained allegations  
7 consistent with diversity and plaintiff failed to contest the petition for removal).

8 9. Starbucks is not a citizen of the State of California. "[A] corporation shall  
9 be deemed to be a citizen of any State by which it has been incorporated and of the State  
10 where it has its principal place of business . . . ." 28 U.S.C. § 1332(c)(1). Starbucks is  
11 not incorporated in California. Rather, at the time this action was commenced,  
12 Starbucks was and is a corporation organized and incorporated under the laws of the  
13 State of Washington. *See* Complaint ¶ 6; Rutt Decl., ¶ 2. Nor is California the state in  
14 which Starbucks has its principal place of business. Rather, as shown below, Starbucks  
15 principal place of business is located in the state of Washington.

16 10. The Supreme Court has explained that a corporation's principal place of  
17 business is determined under the "nerve center" test. *See Hertz Corp. v. Friend*, 130  
18 S.Ct. 1181, 1192 (2010). Under the "nerve center" test, the principal place of business  
19 is the state where "a corporation's officers direct, control, and coordinate the  
20 corporation's activities." *Id.* The Supreme Court further explained in *Hertz* that a  
21 corporation's nerve center "should normally be the place where the corporation  
22 maintains its headquarters" and that a corporation's nerve center is a "single place." *Id.*  
23 at 1192-93. Relevant factors include where executives reside and maintain offices,  
24 where administrative and financial offices are located, where the board of directors  
25 meets, where income tax returns are filed, and where day-to-day control over the

26  
27 <sup>2</sup> Plaintiff alleges that every individual putative class member's damages are under \$75,000.  
28 Complaint, ¶ 3. Even if true, this allegation bears no significance because the \$75,000 threshold is not  
applicable to a removal under CAFA. *Cappuccitti v. DirecTV, Inc.*, 623 F.3d 1118 (11th Cir. 2010).

company is executed. *AHTNA Government Services v. 52 Rausch, LLC*, No. C 03-00130 SI, 2003 WL 403359 (N.D. Cal. Feb. 19, 2003); *State Farm Fire & Casualty Co. v. Byrd*, 710 F. Supp. 1292, 1293 (N.D. Cal. 1989).

11. Under these criteria, Starbucks principal place of business is in Washington. Starbucks maintains its corporate headquarters in Seattle, Washington. Rutt Decl., ¶ 2. Starbucks executive officers, including the chairman, president, chief financial officer, executive vice-presidents, and general counsel, maintain their offices at Starbucks headquarters in Seattle, Washington. Rutt Decl., ¶ 3. From its headquarters in Washington, the Company manages day-to-day operations, including determining and implementing company-wide policy regarding human resources, marketing, finance, accounting, income tax, product distribution, and legal issues. Rutt Decl., ¶ 4. Meetings of Starbucks Board of Directors and stockholders take place in the state of Washington. Rutt Decl. ¶ 5. In addition, Starbucks financial records are maintained in Washington, and the Company's tax returns are filed from the executive offices in Washington. Rutt Decl., ¶¶ 6-7.

12. Accordingly, this action is between citizens of different states—Plaintiff, who is a citizen of California, and Starbucks, which is a citizen of Washington.

13. **Amount in Controversy Under CAFA.** Starbucks avers, for purposes of this Notice only, that Plaintiff's claims place more than \$5 million in controversy.<sup>3</sup>

14. Although Plaintiff alleges that her claims amount to less than \$5 million (*see* Complaint, ¶ 3), this case still meets the jurisdictional requirements for removal because it is certain that there is, in fact, more than \$5 million in controversy. In *Lowdermilk v. United States Bank Nat'l Assoc.*, 479 F.3d 994 (9th Cir. 2007), the Ninth Circuit established a defendant's burden of proof for showing the amount in controversy in a CAFA diversity case where, as here, a plaintiff pleads damages of less than the

<sup>3</sup> A defendant may make the requisite showing by setting forth additional facts in the notice of removal or by affidavit. *See Lamke v. Sunstate Equipment Co., LLC*, 319 F. Supp. 2d 1029, 1032 (N.D. Cal. 2004).

jurisdictional amount. *Id.* at 998-99. The *Lowdermilk* court acknowledged that while a plaintiff is the “master of her complaint and can plead to avoid federal jurisdiction,” such discretion is not absolute and may be overcome by a showing to a “legal certainty” that jurisdiction exists. *Id.* Thus, *Lowdermilk* makes clear that a plaintiff’s allegation is not dispositive of the amount in controversy. Rather, it simply triggers the “legal certainty” standard against which the defendant’s evidence is judged. *Id.* See, e.g., *Lara v. Trimac Transp Serv. (Western) Inc.*, No. CV 10-4280-GHK (JCx), 2010 WL 3119366 (C.D. Cal. Aug. 6, 2010) (defendant may remove case even where plaintiff limits recovery in the complaint to under the jurisdictional minimum if it is certain that the amount in controversy is nonetheless over the jurisdictional minimum); *Collins v. Guitar Center, Inc.*, Nos. 09md2121, 10cv755-LAB (POR), 2010 WL 2682760, at \*1-3 (S.D. Cal. July 2, 2010) (finding defendant established with certainty that amount in controversy in wage and hour case exceeded \$5 million where named plaintiff specifically disclaimed all recovery over \$4,999,999).

15. Here, it is a legal certainty that the amount in controversy surpasses \$5 million. For his Third Cause of Action, Plaintiff alleges that Starbucks owes penalties for having failed to pay all wages to employees upon the end of their employment, as required by Section 203 of the California Labor Code. See Complaint, ¶¶ 52-62. Under Section 203, former employees whom an employer willfully denied wages may recover penalties in the amount of their daily rate of pay for a period of up to thirty days. See Cal. Lab. Code § 203. Plaintiff alleges that Starbucks “applied centrally devised policies and practices” that resulted in class members performing work off the clock during closing shifts. Complaint, ¶¶ 32-34. Thus, under Plaintiff’s theory, all non-exempt California employees who worked closing shifts (except store managers) were



1 paid less than they are owed, and therefore any of these individuals who are former  
2 employees are owed Section 203 penalties. *See* Complaint, ¶¶ 12, 59-61.<sup>4</sup>

3 16. Starbucks has employed more than 50,000 individuals in the non-exempt  
4 barista position in California stores since August 6, 2009. Rutt Decl., ¶ 9. Of those  
5 individuals, more than 25,000 are no longer employed with the company. *Id.* Thus,  
6 Plaintiff's putative class potentially includes more than 25,000 individuals who could  
7 recover Section 203 penalties under Plaintiff's claim. These individuals earned at least  
8 \$8.00 per hour, the minimum wage in California as of August 6, 2009.<sup>5</sup> Rutt Decl.,  
9 ¶ 10. Because these individuals typically worked at least four hours per day, their  
10 average daily rate of pay is at least \$32.00. *Id.* Accordingly, a 30-day penalty would be  
11 at least \$960 per person. Many baristas work closing shifts and, even if only *one-fourth*  
12 of these former employees ever worked a closing shift, the amount of Section 203  
13 penalties in controversy still exceeds \$5 million. Rutt Decl. ¶ 12.

14 17. Thus, without even considering other store positions or Plaintiff's claims  
15 for other wages and penalties or her claim for attorneys' fees, the amount in controversy  
16 clearly exceeds the jurisdictional threshold. *See Lowermilk*, 479 F.3d at 1000 (attorneys  
17 fees are included in the amount in controversy in a class action) (citations omitted).

18 18. There are no grounds that would justify this Court in declining to exercise  
19 its jurisdiction pursuant to 28 U.S.C. § 1332(d)(3) or require it to decline to exercise  
20 jurisdiction pursuant to 28 U.S.C. § 1332(d)(4).

21 19. **Venue.** The United States District Court for the Central District of  
22 California is the judicial district embracing the place where Case No. BC489781 was  
23  
24

25  
26 <sup>4</sup> A three-year statute of limitations applies to claims brought pursuant to Section 203. *See*  
Complaint, ¶12; *Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 1395-96 (2010).

27 <sup>5</sup> The California Department of Labor Standards Enforcement website indicates that the  
28 minimum wage in effect as of January 1, 2008 is \$8.00. *See*  
[http://www.dir.ca.gov/dlse/FAQ\\_MinimumWage.htm](http://www.dir.ca.gov/dlse/FAQ_MinimumWage.htm) (September 4, 2012).

1 filed by Plaintiff and is therefore the appropriate court for removal pursuant to 28  
2 U.S.C. § 1441(a).

3 WHEREFORE, Starbucks requests that the above action now pending against it  
4 in the Superior Court of California, County of Los Angeles, be removed to this Court.  
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6 Dated: September 7, 2012

**AKIN GUMP STRAUSS HAUER &  
FELD LLP**  
GREGORY G. KNOPP  
MARK R. CURIEL  
GALIT A. KNOTZ

9  
10 By  \_\_\_\_\_

Mark R. Curiel

11 Attorneys for Defendant Starbucks  
12 Corporation  
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## PROOF OF SERVICE

## STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los Angeles, California 90067. September 7, 2012, I served the foregoing document(s) described as: **STARBUCKS CORPORATION'S NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§1332(D)(2), 1441,1446, AND 1453** on the interested party(ies) below, using the following means:

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☐ BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

☐ BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ BY MESSENGER SERVICE I served the documents by placing them in an envelope or package addressed to the respective address(es) of the party(ies) stated above and providing them to a professional messenger service for service.

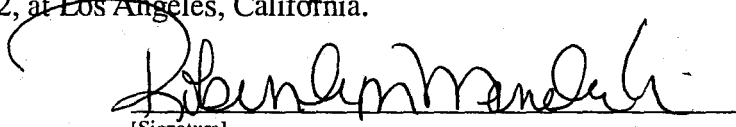
☐ BY OVERNIGHT DELIVERY I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on September 7, 2012, at Los Angeles, California.

Robin-Lyn Mendick

[Print Name of Person Executing Proof]

  
[Signature]

PROOF OF SERVICE